

THE MARTHA'S VINEYARD COMMISSION

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*Martha's Vineyard Commission
Minutes for the Special Meeting of
September 30, 1999*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, September 30, 1999, at 7:30 p.m. in the Baylies Room of the Old Whaling Church, Main Street, Edgartown, Mass.

By 7:41 p.m. a quorum had been reached, and Michael Donaroma, Chair of the Land Use Planning Committee and the Hearing Officer for the evening's Continued Public Hearing, banged the gavel and opened the Meeting.

[Because he had not attended the July 29, 1999 session of the Public Hearing that was about to continue, Richard J. Toole, Chairman of the Commission, left his seat at the table and sat with the audience members.]

Continued Public Hearing: Herring Creek Farm Trust III (DRI #500).

Mr. Donaroma opened the Continued Public Hearing for the Herring Creek Farm III proposal (DRI #500) by reading the Notice of Public Hearing, which read as follows:

"The public is invited to a Continued Public Hearing concerning the following Development of Regional Impact (DRI #500):

Applicant: *Herring Creek Farm Trust
Stuart R. Johnson and Catherine F. Shortsléeve, Trustees
c/o General Investment and Development Company
600 Atlantic Avenue, Suite 2000
Boston, MA 02210*

Location: *Herring Creek Farm
Slough Cove Road, Edgartown,
as registered in the Dukes County Registry
District of the Land Court, Certificates of
Title Nos. 3295, 3825, 3568, 5746 and 5860.*

Proposal: *To subdivide approximately 215 acres in order to
create 33 residential lots, the "East Field Open
Space" and a "Beach Parcel."*

Date and Time: *Thursday, September 30, 1999, at 7:30 p.m.*

Place: *The Old Whaling Church
Baylies Room (Lower Level)
Main Street
Edgartown, Mass.*

Copies of the Application and Plan are available for public inspection at the Commission Offices. Written testimony may be submitted prior to or during the Hearing.

This Hearing is held in accordance with Section 14 of Chapter 831 of the Acts of the Commonwealth of 1977, as Amended, and Chapter 30A, Section 2 of the General Laws of the Commonwealth, as modified by said Chapter 831."

Mr. Donaroma announced that the Hearing session would start with the Applicant's giving his presentation, followed by questions from Commission members, a Staff Report, testimony from Town Boards, and then testimony from members of the public in favor of the proposal, against the proposal and in general. Finally, the Applicant would have "the last say," said Mr. Donaroma.

Applicant Presentation: Stuart R. Johnson, Trustee, Herring Creek Farm Trust.

Stuart R. Johnson introduced himself as a trustee of Herring Creek Farm Trust. "This is an important matter," he began. Because this evening was primarily a time for members of the public to speak, continued Mr. Johnson, he proposed simply to explain where he saw "the process has started and come to." He then outlined that process, which had begun with the Preliminary Decision dated November 23, 1999, granting preliminary approval to the proponents' residential subdivision plan. "That document ... has been our beacon," he noted.

On April 15, 1999, in response to the Preliminary Decision, the Applicant had filed the Final Definitive Subdivision Plan, accompanied by a Environmental Impact Statement

(EIS) with Documentary Appendices and Technical Appendices. Mr. Johnson then described the process from that point, including his meetings with the Land Use Planning Committee (LUPC), Edgartown Committees and Boards, and Commission Staff. Most of the first session of the Public Hearing, on July 29, had been devoted to the Applicant's presentation, with a short period devoted to public input.

As for the future, Mr. Johnson foresaw at least one more Hearing session, in mid-October at the earliest, to hear from a third-party independent water quality expert who had been engaged by the Commission to review the nutrient loading issue as well as the state-of-the-art denitrification system proposed by the Applicant (the Ruck System). "Following that," said Mr. Johnson, "I expect that Herring Creek Farm Trust will be in a position to make its final summation and final presentation."

As the process just described had unfolded, continued Mr. Johnson, a number of issues had cropped up. There had been a "massive" letter-writing and "coupon-collecting" campaign, and "in the spirit of good sportsmanship, I would say I commend the fervent opponents for their tenacity," remarked Mr. Johnson. Among the major issues raised were: 1) the impact on water, including nutrient loading and the Ruck System; 2) the visual impact of the development from the road and from Edgartown Great Pond; and 3) the total-bedroom issue and the Board of Health limit of four bedrooms in the Katama District.

Mr. Johnson then explained that if a particular lot-owner wished to build a home of more than four bedrooms, then he was free to do so as far as the Trust's guidelines were concerned, provided that he installed a state-of-the-art denitrification system and obtained whatever variances and waivers the Board of Health required of him. "Frankly, any suggestion that that violates a local code, I think, is a flagrant mischaracterization of what we have said," he added.

Mr. Johnson then spoke of the Preliminary Decision as being "a reflection of compromise, compromise to resolve problems and issues which we all know exist between Herring Creek Farm Trust and the members of this Commission." Like all compromises, it had been the result of give-and-take. Finally, the Preliminary Decision had been "a reasonable balance between competing thoughts and positions," he said. The simple stroke of reducing the density from 54 units to 32 had been "a huge, huge step by us to resolve these problems."

In the final analysis, concluded Mr. Johnson, this issue was really a question of nutrient loading and visual character. He then explained how a six-bedroom house on a Ruck System would produce less of a nutrient load than a four-bedroom house with a conventional septic system. As for visual character, he would hold off providing any detailed comment until the Applicant's summation in the final Hearing session, which would be delivered by Joe Hibbert of Sasaki Associates, Inc. For now, Mr. Johnson

would say only that the visual impact depended not upon the number of bedrooms, but upon the height, the location and the exterior coloration of the structures.

Other issues that had been raised, he continued, were: 4) affordable housing; 5) beach logistics; and 6) the "essence of the Vineyard" issue, which to the proponent was interchangeable in a sense with the question of visual character.

Mr. Johnson then appealed for "focus and thoughtfulness." What people had been saying, he believed, was, "We like the farm just the way it is." "If I didn't own the farm, I probably would be saying something like that," he said. But he knew how he felt about the whole issue because he had some affinity to property rights. "And we all know that that is a face-off at center ice, as my hockey friends like to say," he remarked.

Mr. Johnson asked his critics for something more than "cynical conclusions," entreating his listeners to find out what critics meant when they contended that the Ruck System was "experimental." Finally, he asked his audience to accept what he called an unalterable truth: "Eventually, there's going to be a difference at Herring Creek Farm." He would listen, then, to those who accepted this and wished to contribute constructively to the planning for this development.

Staff Report: David Wessling.

Mr. Wessling, the Commission Staff member who facilitates the Development of Regional Impact (DRI) process, referred to the copies of the Staff Notes of July 29, 1999, which had been distributed to the Commission members. In addition to those original notes, there were updates by various Staff members, which were copied on pink paper. Members had also received a document from the Aldeborgh/Cohan lawyers for informational purposes only. *[Copies of all reference documents are in the Meeting File of September 30, 1999, as well as in DRI File #500.]*

[The tape recorder was apparently accidentally turned off for the few minutes at this point. Until noted otherwise, these Minutes were be taken from the notes of Commission Secretary Pia Webster.]

Mr. Wessling then walked though the site plan and its boundaries, describing the flat topography and the soil types. He noted that the Applicant had updated the vegetation study done in the early '90s and had provided a map of the vegetation and its major areas. One-third of the proposed houses, continued Mr. Wessling, would be sited on the 100-year floodplain. The Staff Notes described the rare and endangered species on the site, and Staff member William Wilcox's notes on nutrient loading had been appended. The time was 8:00 p.m.

Mr. Wessling then spoke of a new issue that had arisen with regard to the site: an archaeological study by Public Archaeology Laboratory (PAL) has come up with the basic finding that the site had the potential to contain pre-Colonial artifacts.

Mr. Wessling described the affordable housing units proposed for the project. He then held up a site plan, showing the development envelopes shaded dark. *[The tape recorder once again worked properly from this point.]* The layout, he explained, had been based on minimizing intrusion into sensitive areas of the property.

Mr. Donaroma asked if there had been any correspondence since the last session of the Hearing. There had been two types of correspondence, replied Mr. Wessling, from the general public and from Town Officials. There were 640-plus letters from the public; as of the July 29 session, there had been only two. "It's not so much what the letters say. It's enough to know that they're all against the [proposal]," he noted. The primary reasons for objecting to the project were: 1) possible adverse effects on the pond; 2) possible adverse effects on the pondshore environment; 3) questions about the Ruck System; 4) a desire to keep Herring Creek Farm intact; 5) the density of the site plan; 6) the location of some houses on the floodplain; and 7) the mechanics of the beach club and the use of the beach.

As for correspondence from Town Officials, Police Chief Paul Condlin, who in an earlier letter had been neutral, had written that he was now worried about the parking and traffic related to the beach club. In their correspondence, the Conservation Commission (ConCom) had asked for more time to study the proposal and had requested a copy of the Applicant's open space plan, which had not been forthcoming. Also, they had asked Town Counsel to review the conservation restrictions. Other concerns were the location of houses on the floodplain and the density of the development. In their letter to the Commission, the Edgartown Ponds Advisory Committee raised many of the same arguments as the ConCom, with, as Mr. Wessling put it, "a little more bite."

Another important aspect of the proposal, Mr. Wessling continued, was the series of covenants and restrictions from the Preliminary Decision, which included, among other things, construction guidelines and the transfer of development rights of some agricultural acreage to the Town of Edgartown.

Lenny Jason, Jr., the Dukes County Commission representative, wanted to know more about the Public Archaeology Laboratory (PAL) study. Mr. Wessling responded that PAL had done an intensive literature study from previous surveys of the Vineyard and had concluded that there was a "very high probability" of Colonial and pre-Colonial artifacts on the site. *[A copy of the letter from PAL is in DRI File #500.]* There was no actual site work done? asked Jane A. Greene, the Selectmen's Appointee from Chilmark. "That's correct," replied Mr. Wessling. Are they planning to do actual site work? wondered Ms. Greene. Mr. Wessling said that he did not know. What had PAL recommended? asked

Christina Brown, a Commission member at large from Edgartown. "Further study," replied Mr. Wessling.

Tristan Israel, the Selectmen's Appointee from Tisbury, asked about the history of the access to the beach. Mr. Wessling pointed out the beach area on the site plan. The proposal was to sell beach rights to 150 members, he explained. Mr. Donaroma added that this section of South Beach had been privately held and patrolled for a number of years.

Testimony from Town Boards.

Steve Ewing, a member of the Edgartown Conservation Commission as well as of the Ponds Advisory Committee, began by reading a letter dated September 30, 1999, from the Ponds Advisory Committee into the Public Record. *[A copy of this letter can be found in the Meeting File of September 30, 1999, as well as in DRI File #500.]* The letter contained, among others, the following points: 1) the density of the proposal should be reduced; 2) development in the flood zone would not promote the health, safety, convenience and general welfare of the Town; 3) the habitat benefit of the establishment of the East Field should not be accepted; 4) the Applicant should not use changes in wetland definitions to put an unfair burden on sensitive areas; 5) the rendering of the houses on lots 6 through 9 were inadequate and misleading; 6) access to the beach through the dunes should not be permitted because of their fragility; 7) parking for the beach club members was a serious concern; 8) if the wetlands and 100-foot buffer were deducted from developable land area, only a small percentage of land would remain untouched; 9) the site of the old caretaker's cottage should not be developed; and 10) a formal agreement regarding the sluiceway should be developed.

Mr. Ewing then added a few comments. He noted that while no one disagreed that the Applicant had the right to develop the land, he wished to compare it to another pondshore development, Boldwater. In some respects, because it was higher and wooded, that development accepted houses better than would the Herring Creek development. The numbers were revealing, though. Boldwater contained 444 acres (to Herring Creek Farm's 215) with 32 building lots. Subtracting conservation land, 287 acres were left for development (as compared to 137 acres at Herring Creek Farm). This came to 8.9 acres of developable land per lot at Boldwater.

If you did not subtract for open space at Herring Creek Farm and then divided the total acreage (215) by 8.9 acres (see above), that came to 23.8, or approximately 24 lots. That, said Mr. Ewing, was closer to what they should be looking at. Then, subtracting the conservation land, it would be even less dense -- only 15 lots. So 15 building lots on the Herring Creek Farm land would make it comparable in density to the Boldwater development; the current proposal was for 33 lots. "I don't think it's an unreasonable formula to use," remarked Mr. Ewing.

Testimony from Members of the Public Against the Proposal.

Mr. Donaroma asked for testimony from members of the public in favor of the proposal; none was offered. He then asked for testimony from members of the public against the proposal.

Ed Stevens, a resident of Slough Cove Road, was concerned about the traffic that the project would bring to Slough Cove Road. He wondered if it were possible to make the entrance to the project off of Herring Creek Road instead. Another concern was the talk of six-bedroom houses. Mr. Stevens claimed that there were being built in his neighborhood four-bedroom houses that had more than 10,000 square feet of floor area. Was there any limit, he wanted to know, to how many square feet one could put in a house so long as somehow you could try to persuade people that you only had six or four bedrooms? Could there be a square-footage limit on the size of houses? Mr. Stevens also wanted to know why there was even a discussion about putting houses in a floodplain.

Mr. Donaroma noted that the Applicant could answer those questions at the end of the session. Mr. Jason, the Building Inspector for the Town of Edgartown, declared that there were no 10,000-square-foot houses with four bedrooms in the Town.

Benjamin Lowers, a resident of Herring Creek Road, read aloud a letter he had written to the Commission. As a licensed engineer, he felt that building houses in a 100-year floodplain was "a disaster waiting to happen." He had been on the Island when the electricity had been off for as much as two weeks, and under such circumstances the effluent could not be pumped. Also, flooding from hurricanes and severe storms could also overload the system.

Moreover, he wondered, who would be monitoring the Ruck System? And who would clean up the spill, if one occurred? Perhaps, the Commission should insist on bonding to pay for the costs of any cleanup, he said. He was also concerned about the vent pipes. "We breathe that air," he said. Finally, he worried about the beach club and the resultant traffic on Herring Creek Road, which was only 22 feet wide and already loaded with bicyclists and walkers during the summer months. He urged the Commission to reject the proposal.

Next to speak was **Mark Nelson, a principal with the firm of Horsley & Witten, Inc.** *[Mr. Nelson submitted a document to the Commission, copies of which can be found in the Meeting File of September 30, 1999, as well as in DRI File #500.]* He wished, he said, to present to the Commission some of the findings of his firm.

Regarding the wastewater plan, Mr. Nelson was concerned about the cluster of Ruck Systems in the East Field. It was the opinion of Mr. Nelson and others in his firm that this

site, under Title V definitions, should be considered a single facility whose wastewater design flow would be 8,580 gallons per day. The DEP had, however, had certified the Ruck System for General Use for residential flows under 2,000 gallons per day. With the use of a force-main bank and individual soil absorption system, the system had been configured to circumvent the conditions of the Certification for General Use, dated March 24, 1995. Moreover, the sale of private beach rights and the use of reciprocal covenants, leases and easements among lot owners called for a central management system and tertiary treatment.

Another concern with the Ruck System was the pipe that would run into the individual houses and empty into the East Field. There would be a two-foot-by-two-foot-square pipe with all the individual pipes in it. "If that's not a common facility ... I'm not sure what is," remarked Mr. Nelson. "It's been 'condominiumized.'"

Still another concern was the height of the leaching fields in the East Field and the ability to mix those leaching fields with agriculture. Mr. Nelson pointed to a slide which illustrated how the fields would have to be mounded at the surface, based on looking at the water table and adjusting that for the maximum high groundwater, then adding the effluent to that.

The Town of Edgartown required a seven-foot separation between the maximum water table and the bottom on the leaching facility. Given the average elevation that was available at that site and the depth of the water, one would not be able to reach that and so would require mounding. He could not imagine agriculture in a significant way with three-quarters of a foot of cover over a leaching facility.

Mr. Nelson then spoke about nitrogen loading and the numbers proposed by the Applicant, which would exceed the capacity of Edgartown Great Pond and Crackatuxet Cove by a factor of three. Also, the concentration that the Applicant had used for nitrogen from the septic systems was lower than what the DEP had permitted Ruck System for (12 versus 19). And finally, most of the houses would be used for 75 days of total occupancy. The DEP said that each person contributed six pounds of nitrogen per year. The Applicant was saying that one house would contribute only three pounds per year for the entire household.

As for the wildlife habitat, there had been reported 462 avian species on the property, and 78 percent of them were within the area where one-third of the housing was being proposed. Also, lawns of 2,500 to 5,000 square feet would be almost immediately adjacent to wetland areas, and the application of fertilizer and pesticides would not be professionally monitored. The time was 8:46 p.m.

Ms. Greene said she thought that at the last Hearing session, Michael McGrath, who had presented the Ruck System to the Commission, had said that he was allowed to install

systems for up to 1,000 gallons per day; Mr. Nelson had said that 2,000 gallons was what DEP allowed. Mr. Nelson replied that Mr. McGrath's certification as given in the Environmental Impact Report (EIR) was for 2,000 gallons per day, if his memory was serving him well. "That's typical for most of the alternative systems under Title V," he added. And how long had the Ruck System actually been in use? asked Ms. Greene. Probably close to 10 years, perhaps a little more, replied Mr. Nelson. "It's one of the older alternative systems that's out there," he added.

Robert Zeltzer, a Commission member at large from Chilmark, asked Mr. Nelson who had hired him. The Great Plains Conservancy, a non-profit agency in Edgartown, responded Mr. Nelson.

Marcia Cini, a Commission member at large from Tisbury, wanted to know if Mr. Nelson knew of the history of Ruck Systems that were used only seasonally. Was there a start-up period? There was a start-up period, replied Mr. Nelson, although he personally had not seen the data.

Megan Ottens-Sargent, the Selectmen's Appointee from Aquinnah, asked about storm damage to the Ruck System. Mr. Nelson replied that his firm had looked into that issue "some" and that the real concern there was the loss of power because the effluent had to be pumped to the East Field. Also, short-term flooding in the floodplain would have some impact, but the greatest impact would be not being able to get the effluent out of the system.

Sally Steenland, an abutter to the Herring Creek Farm property, read aloud a letter dated September 30, 1999 that she had written to the Commission. *[See the Meeting File of September 30, 1999, as well as DRI File #500.]* Ms. Steenland contended that if the Commission approved the present plan, that she and her husband would be living next to "a sewage disposal area." The Ruck System, she continued, was experimental and too risky to install in the floodplain. The system was not odor-free, and when used seasonally, would take two to four week to work properly. Moreover, she said, waste gases would be expelled from 12-foot-tall vent pipes.

Ms. Steenland went on that the tennis courts and other recreational facilities, which would produce a considerable amount of noise, would be concentrated in lot 33, which was too near to the abutters and too peripheral to the development's homeowners. In addition, although the beach club was currently in a "virtual" state, once this commercial venture was allowed, further development would follow, including on-site parking.

Ms. Steenland hoped that the owners of Herring Creek Farm would instead consider selling their land to a coalition of conservation groups. By doing so, the Wallaces would get back their good name. Ms. Steenland's letter concluded: "Long after everyone in this

room is gone, the land will still be here. To care for it well now is both our responsibility and our legacy."

Brendan O'Neill, Executive Director of the Vineyard Conservation Society, read aloud a letter dated September 30, 1999 that he had written on behalf of the board of directors and the membership of the society. The letter urged the Commission to disapprove the Herring Creek Farm proposal. The land in question was not suitable for supporting the density of development and the intensity of use being proposed by the Applicant, said Mr. O'Neill. The site was prone to coastal storm damage, and the low-lying land was vulnerable to flood effects. The 250-member beach club would intensify the use of the site and the barrier beach, and no provision had been made for off-site parking, unduly burdening public facilities elsewhere.

Over 90 percent of the former range of sandplain grasslands in the Northeast had been lost, continued Mr. O'Neill. Katama was one place where significant public and private investment had been made to create an outpost of protection. "Loss of this property to development would be a significant blow to those efforts," he said. In conclusion, Mr. O'Neill "urge[d] the full exercise of your [the Commission's] powers" in support of the principle stated by Harvard biologist E.O. Wilson, who wrote, "We should judge every scrap of biodiversity as priceless while we learn to use it and come to understand what it means to humanity."

Mr. O'Neill then asked his colleague, **Bob Woodruff**, to come forward. Mr. Woodruff, a **Land Acquisition Associate at the Vineyard Conservation Society**, mounted a copy of the developer's plan of the lots and building envelopes, which he had highlighted to show the 10-foot contour in red, the 12-foot contour in orange and the 14-foot contour in pink. All land lying below the 10-foot contour was highlighted in yellow, and the wetlands were delineated in green. *[Copies of Mr. Woodruff's testimony can be found in the Meeting File of September 30, 1999 and in DRI File #500.]*

Sixteen of the 32 proposed house sites, continued Mr. Woodruff, would lie below the 10-foot contour, within the National Flood Insurance Program's Zone B; this was the 100- to 500-year zone. "It doesn't take a hurricane flood expert to see that building envelopes lying within 100 feet of wetlands which are close to sea level and on a landscape that is nearly flat have enormous exposure to hurricane flood water and the devastating effects of the wave action driven by Category 3, 4 or 5 hurricanes," said Mr. Woodruff. He concluded that this was not the place for a development of this size and suggested that the size of any development be in keeping with the fragile nature of the landscape and not within the hurricane-vulnerable 10-foot contour.

Next to speak was **Joseph Shea**, an attorney with the firm of **Nutter, McClennen & Fish, LLP, of Boston**, representing **John and Janet Aldeborgh and Marshall and Judith Cohan** (collectively, the "Cohan Interests). Mr. Shea described the 1969

agreement between the Cohan Interests and the Wallace family which stated that the Applicant shall not "sell, transfer or convey" any portion of the property subject to the agreement to a third party unless the property was first offered for sale to the Cohan Interests.

In earlier appearances before the Commission, continued Mr. Shea, the Applicant had repeatedly assured the Commission that they would adhere to this agreement. Then in 1996 the Applicant had filed suit against Mr. Shea's clients. When the Commission had given its approval for the Preliminary Plan in 1998, the court had not yet ruled on the enforceability of the agreement; now it had. In February 1999 the court had entered an order holding that the agreement was enforceable. Then in July the Applicant told the Middlesex Superior Court that the Wallaces and the intermediate Wallace entities continued to consider themselves bound to observe the 1969 agreement until it expired in 2010.

Mr. Shea then referred to Chapter 831 and its requirement that the Commission shall consider whether a development would adversely affect other persons or property and, if so, "whether, because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed." In this case, said Mr. Shea, the existence of the agreement, the Applicant's prior promise to the Commission and the Applicant's recent representations to the Court were "circumstances peculiar to the location." Therefore, the Commission was being asked to participate in a definite violation of private rights, private property interests and private legal interests.

Finally, regarding private property rights, referred to earlier by Mr. Johnson, Mr. Shea argued that people had the right to make covenants and contracts and agreements about how they were going to use their land or not use their land, "and that is what is the issue here."

Linda Sibley, a Commission member at large, asked Mr. Shea where exactly the 150 acres in question were located. Mr. Shea said that he was unable to provide a precise answer.

Rosabeth Kanter, an Edgartown resident and self-described "business expert", noted that the proposed beach club would be "a commercial venture in residential territory because memberships would be sold. A club form is a convenient legal form to make something look like a non-profit which is a commercial venture." Then Ms. Kanter asked, "Why would anyone pay to join a beach club adjacent to public beach if there were no facilities above and beyond what the public is entitled to in terms of their access to South Beach right now?" How could one be sure that this developer or the next developer to whom they sold the club rights would not add amenities that would become commercial ventures in a residential neighborhood? "This is a camel's nose under a tent," she remarked.

So, aside from the environmental impacts and the legal covenants and considerations, the Commission had to think hard about what economic interests there were here and how those interests would be likely to be exercised in the future. And as the property continued to change hands in the future, what additional pressure would there be to further destroy an asset that was also a public amenity? Ms. Kanter asked.

Susan Hughes, an resident of a Colonial farmhouse that would be surrounded by the proposed development, read a letter from a nearby neighbor, **Toby Armer**, who was unable to attend that evening's Hearing session. The letter urged the Commission to consider carefully the fragility and beauty and environmental health of Edgartown Great Pond. The writer referred to the 30 acres of pondshore property that he/she had given to the Sheriff's Meadow Foundation and hoped that perhaps there was still time to save the Herring Creek Farm land for conservation. He/she urged the Commission to reject the proposal.

Michael Wild, an abutter to Herring Creek Farm, said he would "take Stuart [Johnson]'s challenge and talk about visual impact." He then displayed to the Commission members two enlargements of photographs of two of the houses currently being built along the Edgartown Great Pond. Mr. Wild noted that the main functional control in the Applicant's design restrictions was a height of 26 feet, there being no restriction on the square-footage of the house. "This is what 26 feet will get you on Slough Cove," said Mr. Wild, nodding toward the photographs.

Next to speak was **Christopher Look, Jr., an abutter to the Herring Creek Farm property.** Mr. Look spoke of the sluiceway that the Wallaces had built in 1972, which had been closed for about the last six years. Crackatuxet Cove was dead already, he said, and only the two Wallace houses were in that area. "Can you imagine what would happen if you let them build 32 in the same place?" Mr. Look asked.

Marsha Cohan, daughter of abutter Marshall Cohan, read a statement written by her father. *[For a copy of this statement, see the Meeting File of September 30, 1999 or DRI File #500.]* Mr. Cohan's statement provided some background on the agreement entered into by the Cohan Interests and the Wallaces when the property that Herring Creek Farm Trust wanted to develop was sold to them. Although the agreement was private, he said, it had important implications for the public, too.

Mr. Cohan remarked that the Applicant was asking the Commission and the public to trust the Wallaces, and he reminded them what his own family's experience had been with the Wallaces and their promises. Mr. Cohan then outlined the details of the agreement and the ensuing court case, already touched upon by his attorney, Joseph Shea.

In conclusion, Mr. Cohan wrote, "Today, Herring Creek Trust wants the Commission and the whole Town to trust them for eternity. I don't think they have earned that kind of trust."

Dick Johnson, Executive Director of the Sheriff's Meadow Foundation, read from a prepared statement, which outlined the serious potential impacts to the shellfish resources and water quality of Edgartown Great Pond, to the fragile shoreline of the pond, to the shrub thicket habitat (an important habitat for migrating birds) and to the remaining oak woodlands, which wildlife consultants had specifically recommended conserving.

Because the water quality issues had already been addressed, Mr. Johnson concentrated on the impact of the proposal on wildlife. Fourteen of the lots would have frontage on Edgartown Great Pond and Crackatuxet Cove and would result in the displacement of nesting birds. Moreover, the shrub habitats were berry-producing and provided a vital food resource to migrating birds.

Mr. Johnson had critical words for the Applicant's failure to update their 1993 wildlife inventory, which had been done during a mere two-day period in mid-summer. The inventory should have been done during the spring or fall migrations, he said. Moreover, the plant list provided by the Applicants was "extremely cursory," and the butterfly and insect report was only a page and a half long and did not even list the species there were found. Mr. Johnson urged the Commission to demand more comprehensive inventories of plants and wildlife which would at a minimum target and identify the species recognized by the Massachusetts Natural Heritage endangered species program. The time was 9:40 p.m.

Next to speak was **Barry Stein, an owner of property on Turkeyland Cove**, who described the process of modifications and adjustments to the original plan as "death by 1,000 cuts." For him personally, the whole idea of the proposal was flawed at root and was not going to be fixed by moving things around. He urged the Commission to take seriously their charter, which asked them to do those things which maintain and enhance the special quality of the Vineyard. "The Commission has been somewhat chary, in my view, about doing that very much," he noted. "This is not a zoning board. This ought to be turned down flat because it makes no sense to be on the Great Pond, a suburban development, a beach club, an experimental technology stuck all over the place ... This is not going to be fixed by monkeying around."

Testimony from the Public in General.

Kitty Burke, a resident of the Edgartown Great Pond shoreline, spoke of the potential effect of the development on the Town's infrastructure. What would happen, she asked, if those six-bedroom houses were to become year-round homes? She asked the Commission members to think seriously about this.

Mark Patinkin, President of the Great Pond Foundation, said that the primary concern of his foundation's members was the pond's health. He was speaking during the technically neutral part of the testimony since his group had not yet done a formal study of the proposal. However, they were clearly concerned about the density of the development, which did not respect the pond's fragile nature.

Mr. Patinkin then compared the density numbers of the Herring Creek proposal (6.51 acres per lot) to those of other development on the Great Pond: Boldwater (13.86 acres per lot); Oyster-Watcha (30.13 acres per lot); and Squibnocket (25.79 acres).

Moreover, Boldwater had stretched its 37 lots, half of which are inland, over three-plus miles of waterfront. Herring Creek would squeeze almost the same number of lots along less than a mile of waterfront. Also, in terms of the numbers of people, given that each house accommodated about five people, Boldwater's 37 lots brought 185 people; given its 513 acres, that would break down to 0.36 people per acre. In the case of Herring Creek, it would be 0.76 people per acre. So on a per-acre basis, Herring Creek would bring in almost twice as many people as Boldwater had. In addition, there would be the 150 families brought to the beach club; that would make it 20 times as dense as Boldwater.

Mr. Patinkin ended by asking the Commission not to relax its density standards for developments around Edgartown Great Pond.

Summary Statement by the Applicant.

Stuart Johnson, Trustee of the Herring Creek Farm Trust, noted that he had failed to mention how the Applicant had interacted with the Commission Staff during the process and that he could do nothing but compliment William Wilcox and David Wessling for the way they had conducted themselves. "At the very least, they have shown me a professionalism and a real search for the truth," he said.

Mr. Johnson said that for the next Hearing session, he would return with experts retained by the Applicant who would reply to many of the comments made that evening. Referring to Mr. Nelson's comments, he said, "This is really a search for the truth. I am very pleased to say to you that Bill Wilcox and our water quality experts have met in my view -- at least the way it's been reported to me -- in a general concurrence on the numbers and the results, and they are dramatically at odds with what's been put before you by Mark Nelson." He added that the Applicant had put the possibility of tertiary treatment plants on the table and had looked at it, and they had decided that the Commission and the community "would never buy that."

Responding to Sally Steenland, Mr. Johnson said that her pleas were received in the spirit in which they had been given. But if there was any suggestion by Ms. Steenland that it

was not perfectly clear in the November Preliminary Decision that there would be a beach club, "please stand and tell me that right now, because it was very clear."

Mr. Johnson said he would not have much to say on the 1969 agreement. In 1994 the Commission had said that they would not consider the 1969 agreement, and he said there was absolutely no reason for the Commission to change their view now. He added, "We're going to wash our linen outside this Commission's Hearing. I'm not going to talk about the fact that Mr. and Mrs. Aldeborgh have fully built out their property at about three acres and they never could do it under our plan."

Mr. Johnson also asked the Commission and the community to consider that if the proposal were accepted, "the Wallaces would no longer be here. There's no trust or non-trust in perpetuity." He proposed that the Commission members put themselves in the position of the Herring Creek Farm Trust, who had brought the best people available together to produce what he believed was a sustainable proposal. "But I have been met time and time again with hostility and with nights like this," concluded Mr. Johnson.

Mr. Donaroma continued the Public Hearing until "around the third week of October." He then called for a short break. The time was 9:57 p.m.

Item #4: Reports.

Richard Toole, the Commission Chairman, returned to the table and reopened the Special Meeting at 10:04 p.m.

Providing the **Land Use Planning Committee (LUPC) Report**, Mr. Donaroma, Chair of that committee, related how Kate Warner, representing the Black Dog Cafe, had come in and reported that work was being done preparing the DRI (#498) for its official LUPC session prior to Public Hearing. She expected to be back at the end of October.

The committee also met with agents for the Sears Building proposal in West Tisbury. Michael Colaneri, a Commission member at large from West Tisbury who had attended the meeting, noted that the building was "huge" -- around 7,000 square feet -- and that it was modeled after the SBS building in Vineyard Haven. Mr. Donaroma said that the committee had looked at a parking plan and a lighting plan, and that the Applicant was nearly ready to come to Public Hearing.

Charles Clifford, Executive Director of the Commission, delivered the **DCPC Report**, noting that the Vineyard Haven Harbor Nomination needed a single small clarification, which would be worked out with Tisbury Executive Secretary Peter Fohlin. The written definition did not quite match the map that had accompanied the Nomination, he said, and Staff member Jo-Ann Taylor would be meeting with Mr. Fohlin shortly to work that out.

Also on the subject of DCPCs, Mr. Brown reported that the proposed amendments to the Edgartown Ponds District DCPC were going to Special Town Meeting on October 28.

Ms. Greene, Chair of the **Aquinnah DCPC Exemption Committee**, reported that her committee had met at noon the Monday before and heard two requests for exemptions, both of which had been turned down. The committee had also conditioned an exemption that they had voted on before; the property had been found to have around 1,460 artifacts on it. The Applicant was meeting next week with the Wampanoag Tribe, and the site was being considered for designation as a National Historical Site.

A brief discussion ensued about the number of exemptions that had been granted and the types of permits being applied for.

Providing the **Affordable Housing Subcommittee Report**, Ms. Cini, Chair of that subcommittee, announced that their next meeting would be at the Commission Offices on Tuesday, October 5, at 5:30 p.m.

The **Planning and Economic Development (PED) Committee Report** was provided by John Early, the Selectmen's Appointee from West Tisbury and Chair of that committee. He spoke of his committee's meeting earlier that evening with the Dukes County Selectmen's Association Growth and Freight Subcommittee during which the Rate of Development (building permit cap) DCPC was discussed. "The educational process continues," noted Mr. Early. "We had a good discussion." He said the two committees would meet once more on the following Wednesday at the regular monthly Selectmen's Association meeting, which would take place at 7:30 p.m. at the Katharine Cornell Theatre in Vineyard Haven.

Mr. Donaroma, who is the Selectmen's Appointee from Edgartown, asked Mr. Early about the possibility of his [Mr. Donaroma's] sitting down with the Edgartown Selectmen to discuss the DCPC in order to clarify any misconceptions. "I think they understand the DCPC process," he said, "but everyone worries about the moratorium, which was cleared up for me a lot tonight." Mr. Early responded that since no Edgartown Selectmen had been at that evening's meeting, this was a good option to consider.

Ms. Greene noted the Wednesday site visits of the Aquinnah DCPC Exemption Committee had been moved to Saturday so that members of the committee could attend the Dukes County Selectmen's Association meeting on October 6. Mr. Toole encouraged as many Commission members as possible to come to that meeting.

Ms. Sibley asked if a site visit to the MVY Realty Trust (DRI #507) property had been arranged. Ms. Brown replied that instead of an LUPC meeting on the following Monday, the committee would meet at the proposal site at 5:00 p.m.

Mr. Toole announced that the Full Commission would be meeting with the Call For Actions petitioners at the Meeting of October 14. There was no Cell Tower Study Group Report or Legislative Update to speak of.

Item #9: Correspondence.

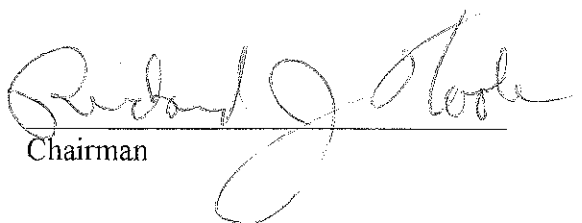
The Commission members discussed a letter from the Lagoon Pond Association regarding the continuing problem at the Windfarm Golf Practice Facility (DRI #432M) with errant golf balls landing on Elisha Smith's property. Mr. Clifford pointed out that it was up to the Town authorities to enforce the conditions of the DRI.

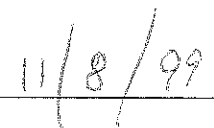
The Commission members also read and discussed a letter from Fred Walters regarding the Tar Kiln Subdivision (DRI #470) and Mr. Walters' desire to modify the Commission's Decision regarding this Development of Regional Impact. Mr. Clifford explained that Mr. Walters wanted to go back to the original subdivision plan for the property, with Form A lots and fewer affordable housing lots. This would require a full Public Hearing, he said.

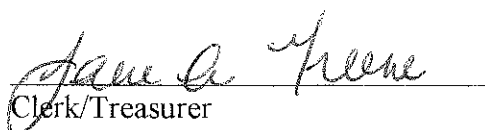
Mr. Toole asked Mr. Clifford about the Procedural Denial regarding the Island Transport/Pier 44/Restrooms DRI (#499/505). Mr. Clifford explained that there was no need to approve that Written Decision, that only the Chair of the Commission had to sign it. Also, a modification of that Decision had to be made to allow the Applicant to comply with a Court Order to install the handicapped-accessible restrooms. There followed a brief discussion about the legal complexities of this DRI.

The Commission members wished a Happy Birthday to Tristan Israel, the Selectmen's Appointee from Tisbury, and to Staff member David Wessling.

A Motion to Adjourn was made and seconded. The Special Meeting adjourned at 10:26 p.m.


Chairman


Date


Clerk/Treasurer


Date

PRESENT: J. Best; C. Brown; M. Cini; M. Colaneri; M. Donaroma;
J. Early; J. Greene; B. Hall, Jr.; T. Israel; L. Jason, Jr.;
M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse;
R. Zeltzer; and A. Harney Gallagher.

ABSENT: M. Lazerow; T. Henson, Jr.; and M. Bolling.

*Summary of Revisions to the
Meeting Minutes of September 30, 1999
Proposed by Commission Members
in the Meeting of October 21, 1999*

[An excerpt from the Meeting Minutes of the Regular Meeting of October 21, 1999 follows immediately. It describes the actions taken by the Commission with regard to the Minutes of September 30, 1999.]

Page	Paragraph	Sentence	Revision
17	3		Add the following sentence at the beginning of the paragraph: "Marcia Cini, a Commission member at large from Tisbury, left the room during the discussion of the Tar Kiln Subdivision Modification since she was ineligible to vote on this DRI."